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ELECTION TRIBUNAL, HOSHANGABAD (MADHYA PRADESH)

NOTIFICATION

New Delhi, the 2nd August 1952

No. 1157/I-15-2/52.—In pursuance of the provisions of sub-section (1) of section 90 of the Representation of the People Act, 1951 (XLIII of 1951), the following election petition presented under section 81 thereof is published for information.

Dated 30th July, 1952.

B. K. PURANIK,  
Chairman

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BEFORE THE ELECTION COMMISSION, INDIA.

Election Petition under Section 81 of the Representation of the People Act, 1951 (Act XLIII of 1951).

HARI VISHNU KAMATH, son of Rama Kamath, aged 44 years, resident of Dhantoli, Nagpur, Tahsil Nagpur, Distt. Nagpur—PETITIONER.

*Versus*

1. Syed Ahmad Syed Isak, Advocate, resident of Hoshangabad, Tahsil and District Hoshangabad.

2. Sukumar Shyamrao Pagare, formerly of Itarsi, now resident at Friends Rural Centre, Rasulia, Tahsil and District Hoshangabad.

3. Raghunath Prasad Kaluram Parsal, resident of Sohagpur, Tahsil Sohagpur, District Hoshangabad.

4. Harnarain Singh Pyarelal Kafakwar, resident of Mouza Sirpan, post Khaparkheda, Tahsil Sohagpur, District Hoshangabad.

5. Raghubir Prasad Nand Kishore Gour, Pleader, Hoshangabad, Tahsil and District Hoshangabad.—Respondents.

The petitioner begs to submit as under:—

1. That the petitioner was one of the duly nominated candidates for election to a seat in the House of the People from Hoshangabad Parliamentary Constituency in the State of Madhya Pradesh. It is single-member constituency. Respondents Nos. 1 to 5 were the other duly nominated candidates at the aforesaid election. Respondents Nos. 4 and 5 however withdrew their candidature under Section 37 of the Representation of the People Act, 1951.

2. That polling for election to the said seat in the said constituency took place on the 31st December, 1951, and the 7th, 17th, and 24th January 1952.

3. That the counting of votes in the said constituency commenced on the 25th January, 1952, and ended on the 3rd February, 1952. The votes were, contrary to the provisions of the Rules, being the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, counted on five different dates at five different places in the constituency, viz. at Gadarwara on 25th January, 1952, at Narsimhapur on 27th January 1952, at Sohagpur on 28th January 1952, at Hoshangabad on 29th January 1952, and at Betul on 3rd February 1952. On the date last-mentioned, viz. the 3rd February, 1952, the Returning Officer, Hoshangabad Parliamentary Constituency declared Respondent No. 1 duly elected, and stated as per Form 16—Return of election under Rule 50 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951—that respondent No. 1 had secured 65,375 valid votes, the petitioner 65,201 valid votes, respondent No. 2 20,653 valid votes, and respondent No. 3 13,609 valid votes. Respondent No. 1 was thus declared elected by a majority of only 174 votes over the petitioner.

4. That the result declaring respondent No. 1 duly elected was published in the *Gazette of India Extraordinary*, dated the fourteenth day of February, 1952, and the notice of the date on which the return of election expenses and the declarations in respect thereof by respondent no. 1 were lodged with the Returning Officer was under Rule 113 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, published in the *Gazette of India Extraordinary* dated the seventeenth day of April, 1952.

5. That the petitioner has in fact secured 5,391 valid votes in Piparia part of Hoshangabad Parliamentary Constituency, but the Returning Officer erroneously totalled the valid votes polled by petitioner in that part as 5,321, *vide* Form 14, account of ballot papers under Rule 46—for Piparia part of Hoshangabad Parliamentary constituency. Had the figures recorded in column 4 of that Form 14 been correctly totalled, the petitioner would have received 70 more valid votes than have been recorded by the Returning Officer as the number of valid votes obtained by the petitioner in that part.

6. That the Election Commission decided, under Rule 28 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, that the ballot paper to be used for the purpose of voting at elections to the House of the People from all Parliamentary Constituencies in Madhya Pradesh should have, as its distinguishing mark, a thick green bar printed near the left margin thereof. The said decision of the Election Commission was contained in the directions issued by the Commission on the 20th September, 1951, to the Chief Electoral Officer of Madhya Pradesh.

7. That in the ballot boxes used at polling stations Sobhapur Nos. 316 and 317 in Sohagpur part of Hoshangabad Parliamentary Constituency (polling stations sobhapur Nos. 9 and 10 of Sohagpur Legislative Assembly Constituency) ballot papers bearing marks different from the aforementioned mark of ballot papers authorized for use at those polling stations were found.

8. That the Returning Officer illegally counted such ballot papers having bars other than green which were found in the ballot boxes at the stations aforementioned, viz., Nos. 316 and 317 of Sobhapur in Sohagpur part of Hoshangabad Parliamentary Constituency. Thus invalid and void votes were counted illegally. In accordance with the decision of the Election Commission referred to in para. 6 above, such ballot papers were not authorized for use, and could not be used for the purpose of voting at election to the House of the People at any polling station or booth in Hoshangabad Parliamentary Constituency.

9. That the Returning Officer should not have counted, and should have rejected, under Rule 47 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, all ballot papers bearing marks different from the marks of ballot papers authorized for use at the polling stations Nos. 316 and 317—at which the ballot boxes in which they were found were used as aforesaid. The Returning Officer was bound to reject all such ballot papers contained in those ballot boxes and acted illegally in not rejecting the same.

10. That noncompliance with the mandatory provisions of Rule 47 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, and the consequent improper and illegal acceptance by the Returning Officer of unauthorized and void ballot papers found in the ballot boxes at the aforesaid two polling stations has materially affected the result of the election: respondent No. 1 was thereby shown to have obtained 301 valid votes at those two stations, and the petitioner to have obtained 62 valid votes, respondent No. 1 thus securing illegally a marginal advantage of 239 votes by the improper and illegal counting of void votes, and he having been declared elected by a majority of 174 votes only over the petitioner. In fact the votes given to respondent No. 1 and to petitioner at the

aforesaid two stations were invalid and void votes, as the ballot papers found in the ballot boxes at those two stations should have been rejected by the Returning Officer on the ground aforesated. Had they been so rejected, the petitioner would have secured a majority of valid votes; the petitioner would have received 65139 valid votes, and respondent No. 1. 65074 valid votes only.

11. That the Returning Officer failed to comply with the mandatory provisions of the rules and orders made under the Representations of the People Act, 1951, in the matter of counting of votes, and did not verify, under rule 49 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, the account submitted by the presiding officer of each polling station or booth in Form 10 under Rule 33 by comparing it with the total number of valid votes given to candidates at each polling station or booth as recorded in Form 14 under rule 46, and with the number of the valid and rejected ballot papers and the unused ballot papers in his possession. Had sufficient and diligent care been taken in this regard, it would have been detected that in the case of several polling stations the total number of "valid" ballot papers in the ballot boxes of the candidates at each of those stations—as recorded in column 4 of Form 14 under rule 46—exceeded the number of ballot papers which should have been found in the ballot boxes at that station as per entry 6 in Form 10 (Rule 33)—ballot paper account submitted by the presiding officer of that station. An inspection of Form 10 and Form 14 with regard to the 504 polling stations of Hoshangabad Parliamentary Constituency has disclosed many such glaring discrepancies, of which only a few are cited as instances under:—

Serial No.	Name of polling Station	Number of station of parliamentary constituency	Number of ballot papers which should have been found in boxes at the station as per entry 6 in Form 10	Total number of "valid" papers actually found in boxes at the station <i>vide</i> Form 14
1	Kamod . .	33	389	399
2	Sahawan . .	116	423	424
3	Babaikalan . .	110	633	635
4	Basuria . .	121	400	401
5	Bilguwan . .	187	476	478
6	Madanpur . .	107	258	260
7	Gadaghat . .	269	154	166
8	Umardha . .	274	212	214
9	Bankhedi . .	283	312	317
10	Matkuli . .	304	91	92
11	Atari . .	457	620	622
12	Chicholi . .	460	687	688

The Returning Officer has not reconciled these contradictions; nor has he explained why or how ballot papers in excess as shown above were recorded in column 4 of Form 14 as having been found in the ballot boxes.

12. The opening for counting of votes, of a large number of ballot boxes—at one of the places as many as 66—at a time, made it impossible for the petitioner or his counting agent to watch and ensure that counting of votes was being properly and

correctly done. Nor had the petitioner and his counting agent access, during the counting of votes, to the accounts of ballot papers in Form 10 submitted by the various presiding officers.

13. That having regard to the figures cited in paragraph 11 above, the petitioner states that the result of the election has been materially affected by serious mistakes in the counting of votes throughout Hoshangabad Parliamentary Constituency, and by the fact that there has been no proper and complete verification as required by the mandatory provisions of rule 49 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. Therefore a total recount of valid votes in the entire Parliamentary Constituency should be ordered. The packets of valid ballot papers and of rejected ballot papers pertaining to the ballot box of each candidate at each polling station or booth, as well as of the marked copy of the electoral roll which are in the custody of the Returning Officer should also be ordered, under rule 52 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, to be produced, opened and their contents carefully inspected. Such a total recount in the entire constituency will reveal that the petitioner has in fact received a majority of the valid votes.

14. That a Treasury receipt showing that a sum of Rs. 1,000 has been deposited by the petitioner in a Government Treasury as a security for costs of this petition under Section 117 of the Representation of the People Act, 1951, is attached.

15. The petitioner submits that on one more of the grounds set forth in the preceding paragraphs, the election of the returned candidate—respondent No. 1—void and illegal. The petitioner claims and states that in fact he has received a majority of valid votes, and that therefore he is entitled to a declaration that he has been duly elected to a seat in the House of the People from Hoshangabad Parliamentary Constituency in the State of Madhya Pradesh. The petitioner claims a declaration that the election of respondent No. 1, the returned candidate, is void, and that the petitioner himself has been duly elected. The petitioner also prays that the costs of this petition be awarded to the petitioner.

Sd/- H. V. KAMATH,  
(Hari Vishnu Kamath)  
Petitioner.

#### Verification

I, Hari Vishnu Kamath, do hereby verify that the contents of paragraphs 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, are true to my personal knowledge and those of paragraphs 6 and 13 are on information received believed by me to be true.

Verified at New Delhi this day the twenty-second of April, One thousand Nine Hundred and Fifty-two.

Sd/- H. V. KAMATH,  
(Hari Vishnu Kamath)  
Petitioner.

#### Election Petition No. 180 of 1952.

Presented to me this the twenty third day of April, 1952, by Shri H. V. Kamath, the petitioner.

P. S. SUBRAMANIAN, Secy.